

Remarks

In response to the Office Action dated July 08, 2008, Applicant respectfully requests reconsideration based on the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance.

Interview Summary

A telephone interview was conducted on August 31, 2008 between Examiner Fearer and the undersigned. During the interview it was discussed that the Office Action was equating the SAN Server 302 of Padovano to both the recited first storage area network layer of claim 1 and also to the Media Server within the processor layer recited in claim 2 which depends from claim 1. It was indicated that there was a defect in the Office Action and that one of the Media Server or the first storage area network layer was not described by Padovano as asserted by the Office Action. The Examiner requested written arguments be provided for reconsideration.

103 Rejections

Claims 1-10 and 16-17 are rejected under 35 USC 103(a) as being unpatentable over Padovano (U.S. Pat. 6,606,690) in view of Nishimura (U.S. Pat. 7,162,597) and further in view of Wang (U.S. Pat. 6,783,367). Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Mann (U.S. Pat. 6,963,590). Claims 12-15 are rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Johnson (U.S. Pat. App. 20020116452). Claim 18 is rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Wisner (U.S. Pat. App. 20020163810). Claims 19-20 are rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Borthakur (U.S. Pat. App. 7,191,225).

Claims 1-10 and 16-17

Independent claim 1 recites:

“[a]n enterprise data backup and recovery system, comprising:

a first network and a second network in communication through a third network;
the first network comprising:
 a first processor layer;
 a first storage area network layer in communication with the first
processor layer; and
 a first storage layer in communication with the first storage area network
layer;
the second network comprising:
 a second processor layer;
 a second storage area network in communication with the second
processor layer; and
 a second storage layer in communication with the second storage are
network layer;
 wherein, the first and second storage layers are shared by the first and second
networks via the third network; and
 wherein, information stored in the first storage layer is transferred to the second
storage layer via the third network under the control of the first processor layer.

The Office Action rejects independent claim 1 by asserting that Padovano describes most of the claim elements but concedes that Padovano fails to describe an enterprise data backup and recovery system. The Office Action proceeds by asserting that Nishimura describes an enterprise data backup and recovery system, curing this deficiency in Padovano.

The Office Action also concedes that the combination of Padovano and Nishimura fails to describe “a first network and a second network in communication with a third network”. [Applicant respectfully points out that the claim language recites “via a third network” and NOT “with a third network”] The Office Action proceeds by asserting that Wang cures this conceded deficiency in the combination of Padovano and Nishimura.

In its rejection of independent claim 1, the Office Action equates SAN Servers 302 of Padovano to both the *first storage layer* and the *second storage layers*. The Office Action also equates the network 118 (OA pg. 3) to the recited first network, the network 116 of Padovano to the recited second network and network 208 to the recited third network.

The Office Action proceeds to assert that although Padovano does not describe that the first and second storage layers are “shared by the first and second networks via the third network”, Wang describes transferring data between a first and second network

via a third network. (See, Fig. 2 of Wang 222 [second network], 214 [third network], 230 [first network]).

Applicant respectfully asserts that there is no motivation to combine Padovano with Wang because the modification in view of Wang would render Padovano unfit for its intended purpose or Padovano would have to be fundamentally redesigned. (MPEP 2143.01-02). Padovano is concerned with the optimization of storage between a Network Attached Server (NAS) and a Storage Area Network (SAN) server. Storage is allocated from the SAN Server to the NAS server which exports the storage to the third network 208 for use by hosts 204-206.

Padovano describes that hosts 204-206 communicate directly with NAS server 304 over third network 208. (See. Padovano Fig. 3B, Fig. 6, Col. 13, l. 3-22). Hosts 102-106 communicate with both the NAS server 304 and SAN server 302 via the second network 116. The storage layer devices 110-114 communicate with the SAN server via first network 118. Padovano describes that each of networks 1-3 communicate with each other using the NAS Server, the SAN server or both as a storage node. (See, Padovano Fig. 3B). The SAN looks at the NAS as a host where storage may be shared.

The Office Action correctly asserts that Wang describes a first (an intranet) and second network (the internet) transferring data directly through a third network (a “Dirty Network”). However, modifying Padovano (Fig. 3B, 4, 5, 6) with the serial network chain of Wang would render Padovano unfit for its intended purpose or require the operating principal of Padovano to be modified because Padovano’s flexibility to allocate storage between the SAN, the NAS and between the NAS/SAN and all of hosts would be removed. This flexibility in reallocating a storage among networks is a fundamental operating principal of Padovano.

Because the modification of Padovano by Wang would render Padovano unfit for its intended purpose or, alternatively, require Padovano to be redesigned, there is no motivation for one of ordinary skill in the art to look to modify Padovano. Therefore, a prima facie case of obviousness cannot be established. As such, independent claim 1 is allowable for at least this reason. Claims 2-20 depend from allowable independent claim 1 and are allowable for at least the same reason.

Claims 2-9, 10 and 16

Claim 2 depends from base claim 1 and inherits all of its features. When considered in light of independent claim 1 from which claim 2 depends, claim 2 recites, in pertinent part:

An enterprise data backup and recovery system, comprising...

- a first processor layer, wherein the first processor layer comprises:
 - a first media server,
 - a first application storage manager server in communication with first media server via a first local area network, and
 - a first client in communication with the first media server via the first local area network, wherein the information is transferred to the first media server and to the first storage layer over the local area network;
 - a first storage area network layer in communication with the first processor layer; and
 - a first storage layer in communication with the first storage area network layer...

The Office Action rejects claim 2 by asserting that Padovano describes most of the claim elements but concedes that Padovano fails to describe an enterprise data backup and recovery system. The Office Action proceeds by asserting that Nishimura describes an enterprise data backup and recovery system, curing this deficiency in Padovano.

The Office Action also concedes that the combination of Padovano and Nishimura fails to describe “a first network and a second network in communication with a third network”. The Office Action proceeds by asserting that Wang cures this conceded deficiency in the combination of Padovano and Nishimura.

However, Applicant respectfully asserts that Padovano fails to describe the subject matter asserted to Padovano by the Office Action. For example, Padovano necessarily fails to describe either a *first storage area network layer* or it fails to describe a *first media server* for the following reasons.

In its rejection of independent claim 1, the Office Action expressly equates “storage appliance 108, which **includes a SAN server 302**” to the recited *first storage layer*. At the same time, in its rejection of claim 2 on page 8, the Office Action also expressly equates the **SAN server 302** to the recited *first media server*. Therefore, either

the Office action's analysis of Padovano is simply in error or by implication, the Office Action is relying upon an inference that Padovano describes that the *first storage layer* comprises the *first media server*.

Assuming that the analysis of Padovano by the Office Action is merely defective, Padovano necessarily fails to describe one of the *first media server* or the *first storage layer* because SAN Server 302 cannot be in both the *first storage layer* and also be in the *first media server* which is in the processor layer.

In the alternative and assuming for the sake of this argument, without conceding, that the analysis of Padovano in the Office Action is not merely defective, an inference that the *first media server* is comprised within the *first storage layer* is contrary to the claim recitations of claim 2.

Both claim 2 and Padovano must each be considered as a whole. As such, claim 2, considered in light of the recitations of base claim 1, recites "a first processor layer...[that] comprises: a first media server..." and further recites that the "first storage area network layer in communication with the first processor layer; and a first storage layer in communication with the first storage area network layer".

Because Padovano is being interpreted as describing that the *first media server* is comprised within the *first storage layer*, Padovano cannot also describe that the *first media server* is simultaneously comprised within the first processor layer, as recited in the claim. Because Padovano is being construed as describing that the *first media server* is comprised within the *first storage layer*, Padovano is not describing that *first media server* is comprised in the *first processor layer*. As such, Padovano fails to describe the subject matter asserted to Padovano by the Office Action.

In regard to Nishimura, Nishimura concerns itself with a data back up system for both a first server with data in a first form and a second sever with data in a second form where a data converter converts from the first form to the second form. Nishimura does not describe a media server as disclosed in light of the specification nor does it describe the use of a media sever in a processor layer that is distinct form a storage area network layer.

In regards to Wang, Wang concerns the access to a training website over one of an internet or a telephone network. Wang does not describe a media server as disclosed

in light of the specification nor does it describe the use of a media sever in a processor layer distinct form a storage layer.

Since Padovano fails to describe the subject matter asserted to it and because Nishimura and Wang both fail to cure the additional discrepancies in Padovano, the combination of Padovano, Nishimura and Wang fails to describe each and every claim element of claim 2. Therefore, the Office Action has failed to establish a prima facie case of obviousness. As such, claim 2 is allowable over the combination of Padovano, Nishimura and Wang for at least these additional and independent reasons. Claims 3-9 depend from an allowable claim 2 and are allowable over the combination of Padovano, Nishimura and Wang for at least these same reasons.

Applicant also notes that the rejections of dependent claims 10 and 16 also suffer from similar deficiencies as the rejection of claim 2. The Office Action on page 12 equates Padovano's **SAN Server 302** to the *first network storage area layer* for both claims 10 and 16. **SAN Server 320** cannot be both the recited *first storage layer* and the *first storage network layer*, as asserted by the Office Action. As such, claims 10 and 16 are allowable over the combination of Padovano, Nishimura and Wang for at least the same reasons.

In regards to Bothakar, Bothakar concerns methods for data access from storage and does not disclose the use of a media server as described in light of the specification nor does it describe the use of a media sever in a processor layer.

In regards to Mann, Mann concerns the integrated delivery of data to a user device with audio, video and digital data. Mann does not describe the use of a media server as disclosed in light of the specification or the use of a media sever in a processor layer.

In regards to Johnson, Johnson concerns methods for multi processing data to optimize band width utilization using a switch based computer system. Johnson does not describe the use of a media server as disclosed in light of the specification or the use of a media sever in a processor.

In regard to Wisner, Wisner concerns accessing resources from a primary and secondary source via switch fabric. Wisner does not describe the use of a media server as disclosed in light of the specification or the use of a media sever in a processor layer.

Claims 11-15 and 18-20

Each of claims 11-15 and 18-20 depends independent claim 1. The Office Action rejects dependent claims 11-15 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over Padovano in view of Nishimura in view of Wang and variously in view of Mann, Johnson, Wisner or Borthakar.

As discussed above in regards to independent claim 1, there is no motivation to modify Padovano in view of Wang. Therefore, a prima facie case of obviousness cannot be established. As such, independent claim 1 is allowable over the combination of Padovano, Nishimura and Wang in any combination of Mann, Johnson, Wisner and/or Borthakar. Dependent claims 11-15 and 18-20 depend from an allowable independent claim 1 and are allowable for at least the same reasons.

Conclusion

In view of the foregoing remarks, this application is now in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes that the application is not in condition for allowance, the Examiner is invited to call the Applicant's attorney at the number listed below.

However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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